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Co. v. Western Union Tel. Co., 119 Fed. 294. At common law the defendant is not a *bona fide* purchaser for value, as an executory promise is not such value as to cut off equities. *Brown v. Welch*, 18 Ill. 343; *Keyser v. Angle*, 40 N. J. Eq. 481, 4 Atl. 641. Under the Uniform Sales Act, value is defined as "any consideration sufficient to support a simple contract"; but this provision is omitted from the act as adopted in New York, and common-law principles, therefore, prevail in that state. As the defendant can thus make no use of the goods sold him by the plaintiff, it seems clear that the warranty was broken and he should not be forced to pay for them.

SPECIFIC PERFORMANCE — DEFENSES — INADEQUACY OF CONSIDERATION.—The defendant, through a real estate agent, agreed to convey real estate worth about \$12,000 and pay in cash \$15,000 in exchange for city property of the plaintiff's worth about \$15,000. The defendant's agent was secretly receiving a commission on the deal from the plaintiff. Held, that specific performance will not be granted. *State Security & Realty Co. v. Shafer*, 20 Det. L. N. 772 (Mich. Sup. Ct., Sept. 30, 1913.)

The exercise of equity's jurisdiction to compel specific performance of a contract rests upon the sound discretion of the court in view of all the circumstances. *Norris v. Clark*, 72 N. H. 442, 57 Atl. 334. This specific-performance jurisdiction will not be exercised where the agreement is unconscionable, even though equity would not be justified in setting aside the contract. *Cathcart v. Robinson*, 5 Pet. (U. S.) 264. So, where there is evidence of unfair dealing or sharp practice coupled with inadequacy of consideration in the contract, specific performance will be refused. *Woolford v. Steele*, 27 Ky. L. Rep. 88, 84 S. W. 327; *Shoop v. Burnside*, 78 Kan. 871, 98 Pac. 202. By statute in some jurisdictions specific performance will not be granted unless it appears that the consideration was adequate. *White v. Sage*, 149 Cal. 613, 87 Pac. 193. But inadequacy of consideration alone is not generally enough to justify a refusal to enforce the contract specifically. *Coles v. Trecotthick*, 9 Ves. 234; *O'Brien v. Boland*, 166 Mass. 481, 44 N. E. 602. If, however, the inadequacy is so great as to shock the conscience of the court and be decisive evidence of unfair dealing, specific performance will be refused. *Clithero v. Ogilvie*, 1 Desaus. Eq. (S. C.) 250. In such a case the hardship on the defendant is so great as to overcome any hardship on the plaintiff resulting from the denial of an incident of his contract, and equity is better served by leaving the purchaser to his remedy at law. See *Seymour v. Delancey*, 3 Cowen (N. Y.) 445, 517. How gross the inadequacy must be depends on the circumstances, but the principal case seems in accord with the trend of modern authority on this point. See *Worth v. Watts*, 74 N. J. Eq. 609, 611, 70 Atl. 357, 358. The court need not have based its decision entirely on this ground, however. The fact that the defendant's agent received a commission from the plaintiff without the knowledge of the defendant would seem to be sufficient evidence of collusion to justify a refusal to decree specific performance. *Fish v. Leser*, 69 Ill. 394; *Palmer v. Gould*, 144 N. Y. 671, 39 N. E. 378; *Young v. Hughes*, 32 N. J. Eq. 372. See 15 HARV. L. REV. 318, 741.

STATUTES — INTERPRETATION — MEANING OF "MANUFACTURING ESTABLISHMENT."—A bankrupt company imported preserved cherries, which it colored, flavored, bottled, and placed upon the market as "Maraschino cherries." Creditors who had furnished supplies claim a lien upon the bankrupt's property under a statute providing for such security where the business is a "rolling mill, foundry, or other manufacturing establishment." Ky. STAT., § 2487; (U. S.) ACT, July 1, 1808, c. 541; BANKRUPTCY ACT, § 64 b (5); 30 STAT. AT LARGE, 563. Held, that the lien attaches. *In re I. Rheinstrom & Sons Co.*, 207 Fed. 119 (Dist. Ct., E. D. Ky.).

The apparently chaotic state of the authorities on the construction of the term "manufacturing establishment" is due to the fundamental principle that the intent of the legislature is the controlling consideration. Corresponding terms of similar statutes may well receive opposite interpretations in two jurisdictions, because of a difference in the legislative policies expressed by the two statutes. *Commonwealth v. Northern Electric L. & P. Co.*, 145 Pa. 105, 22 Atl. 839; *People ex rel. Brush Elec. M. Co. v. Wemple*, 129 N. Y. 543, 29 N. E. 808. It is submitted that the court in its search for a "logical rule" to fit all cases attempts to realize the impossible and fails to give proper weight to general principles of construction. As the statute in the principal case gives one class of creditors a priority over another, it should be strictly construed against the lien claimants. See *Rogers v. Currier*, 13 Gray (Mass.) 129, 134. The principle of *ejusdem generis*, that where particular words are followed by a general term the latter is designed to include only things of a like class with those previously enumerated, tends to show that only large industrial concerns were within the purview of the statute. *Pardee's Appeal*, 100 Pa. St. 408; *Newport News, etc. Co. v. United States*, 61 Fed. 488. And from the evidence quoted in the opinion, it seems a fair inference that the policy of the statute was to stimulate development of the state's mineral resources. Previous Kentucky cases present some authority for a broader interpretation. *Winter v. Howell*, 100 Ky. 163, 58 S. W. 591; *Bogard v. Tyler*, 119 Ky. 637, 55 S. W. 700. But it is submitted that the principal case involves too great a departure from this policy.

TAXATION — GENERAL LIMITATIONS ON THE TAXING POWER — CONSTITUTIONALITY OF DISCRIMINATORY TAX ON FOREIGN CORPORATIONS DOING INTRASTATE BUSINESS. — Two foreign corporations who had long done intrastate business in Massachusetts objected to an excise tax, imposed on foreign corporations alone and based on their capital stock, as being contrary to the Constitution. *Held*, that the tax is constitutional. *Baltic Mining Co. v. Massachusetts*, 34 Sup. Ct. 15.

For a discussion of the question of taxation of foreign corporations, see NOTES, p. 275.

TAXATION — PARTICULAR FORMS OF TAXATION — INCOME TAX — CALCULATION OF INCOME OF MINING COMPANY. — In assessing the income of a mining company under section 38 of the federal corporation tax of 1909, U. S. COMP. STAT. SUPP. 1911, p. 947, the collector subtracted from the total proceeds of ore sold, the expense of mining it, but not its original value in the ground. *Held*, that the tax was properly assessed. *Stratton's Independence, Limited, v. Howbert*, 207 Fed. 419 (Dist. Ct., D. Colo.), affirmed by U. S. Supreme Court, Sup. Ct. No. 457 (Dec. 1, 1913).

A land company which had leased a mine was assessed under the federal corporation tax on the royalties received from the proceeds of the sale of ore. *Held*, that such royalties do not constitute income. *Sargent Land Co. v. Von Baumbach*, 207 Fed. 423 (Dist. Ct., D. Minn.).

The Supreme Court settles this conflict in favor of the view that proceeds from the sale of ore is income. The conflicting decisions of the federal district courts each find support in authority. *Commonwealth v. Ocean Oil Co.*, 59 Pa. 61; *United States v. Nipissing Mines Co.*, 202 Fed. 803. Against the view taken by the Supreme Court it is urged that ore in the ground is capital, and that therefore its sale cannot yield an income. This argument hardly accords with the actual facts. Mining consists in exploring, raising, and selling natural deposits which, when the mine is opened, are imperfectly known, and therefore non-existent for economic purposes. The "value in the ground" comes into being gradually with the progress of the mine; hence it is really